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2 THE HONORABLE RICHARD MCDERMOTT
3 Notice for Hearing: August 21, 2015 at 9:30 a.m.
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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR KING COUNTY

9 RAMON ANEL,

10 Plaintiff,

11 v.

12 FRANCISCAN MEDICAL GROUP, a
13 Washington Corporation; FRANCISCAN
14 HEALTH SYSTEM, a Washington Corporation;
and CATHOLIC HEALTH INITIATIVES, a
Colorado Corporation,

15 Defendants.
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No. 14-2-10378-6 KNT


~~PROPOSED~~ ORDER ON THE
PARTIES' MOTIONS FOR SUMMARY
JUDGMENT

1 **THIS MATTER**, having come before the Court on Defendants' various Motions for
2 Summary Judgment.

3 The Court having considered the following:

4 1. Defendants' Motion for Summary Judgment Against Plaintiff's Tortious
5 Interference with Business Relationships/Expectancies Claim;

6 2. Declaration of Sean Gallagher in Support of Defendants' Motion for Summary
7 Judgment Against Plaintiff's Tortious Interference with Business Relationships/Expectancies
8 Claim with exhibits attached thereto;

9 3. Defendants' Motion for Summary Judgment Against Plaintiff's Defamation
10 Claim;

11 4. Declaration of Sean Gallagher in Support of Defendants' Motion for Summary
12 Judgment Against Plaintiff's Defamation Claim with exhibits attached thereto;

13 5. Defendants' Motion for Summary Judgment Against Plaintiff's Malicious
14 Prosecution Claim;

15 6. Declaration of Sean Gallagher in Support of Defendants' Motion for Summary
16 Judgment Against Plaintiff's Malicious Prosecution Claim with exhibits attached thereto;


17 7. Defendants' Motion for Summary Judgment Against Plaintiff's Wrongful
18 Termination and Wage Claims;

19 8. Declaration of Sean Gallagher in Support of Defendants' Motion for Summary
20 Judgment Against Plaintiff's Wrongful Termination and Wage Claims with exhibits attached
21 thereto;

22 9. Plaintiff's Motion for Partial Summary Judgment;

23 10. Declaration of Ramon Anel in Support of Plaintiff's Motion for Partial
24 Summary Judgment;

25 11. Declaration of Scott Blankenship in Support of Plaintiff's Motion for Partial
26 Summary Judgment and the exhibits attached thereto;

- 1 12. Plaintiff's Combined Opposition to Defendants' Motions for Summary
2 Judgment;
3 13. Declaration of Ramon Anel in Support of Plaintiff's Combined Opposition to
4 Defendants' Motions for Summary Judgment;
5 14. Declaration of Paul Woods in Support of Plaintiff's Combined Opposition to
6 Defendants' Motions for Summary Judgment with exhibit attached thereto;
7 15. Declaration of Scott Blankenship in Support of Plaintiff's Combined
8 Opposition to Defendants' Motions for Summary Judgment and the exhibits attached thereto;
9 16. Defendants' Response in Opposition to Plaintiff's Motion for Partial Summary
10 Judgment;
11 17. Declaration of Sean Gallagher in Support of Defendants' Response in
12 Opposition to Plaintiff's Motion for Partial Summary Judgment with exhibits attached thereto;
13 18. Defendants' Combined Replies in Support of Motions for Summary Judgment;
14 19. Declaration of Richard Murray in Support of and exhibits filed in Defendants'
15 Combined Reply to Motions for Summary Judgment with exhibits attached thereto;
16 20. Plaintiff's Reply in Support of Plaintiff's Motion for Partial Summary
17 Judgment;
18 21. Supplemental Declaration of Scott Blankenship in Support of Plaintiff's
19 Motion for Partial Summary Judgment with exhibits attached thereto;
20 22. Oral Argument held on August 21, 2015;
21 23. _____ 

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23 The Court has considered the briefs of the parties and oral argument, and has reviewed
24 the pleadings and records on file.
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1 **THE COURT HEREBY ORDERS:**

2 1. Defendants' Motion for Summary Judgment Against Plaintiff's Wrongful
3 Termination and Wage Claims is DENIED in its entirety.

4 2. Defendants' Motion for Summary Judgment Against Plaintiff's Defamation
5 Claim is DENIED in its entirety;

6 3. Defendants' Motion for Summary Judgment Against Plaintiff's Malicious
7 Prosecution Claim is DENIED in its entirety;

8 4. Defendants' Motion for Summary Judgment Against Plaintiff's Tortious
9 Interference with Business Relationships/Expectancies Claim is GRANTED IN PART AND
10 DENIED IN PART:

11 a. Plaintiff may not base his tortious interference claim upon his contention
12 that Defendants interfered with leases at Pulmonary Consultants and
13 MultiCare. In all other respects, Defendants' Motion for Summary
14 Judgment Against Plaintiff's Tortious Interference with Business
15 Relationships/Expectancies Claim is DENIED.

16 5. Plaintiff's Motion for Partial Summary Judgment is GRANTED IN PART as
17 to Plaintiff's claim for wrongful discharge in violation of public policy:

18 a. As a matter of law, Plaintiff has established the clarity element of his
19 wrongful discharge claim, because Washington law recognizes a clear
20 public policy of seeking wages earned. Thus, as to the clarity element, there
21 is no dispute as to any material fact and Plaintiff is entitled to judgment as a
22 matter of law.

23 b. As a matter of law, Plaintiff has established the jeopardy element of his
24 wrongful discharge claim, because (1) Dr. Anel engaged in conduct
25 directly related to the public policy of seeking wages, by protesting when
26 Defendants failed to pay Dr. Anel and his colleagues wages that Dr. Anel

1 held an objectively reasonable belief were owed, and (2) other means for
2 promoting the public policy of seeking wages earned are inadequate.
3 Among other things, the jeopardy element is proven by testimony from
4 Defendants' decision-makers in this lawsuit. Thus, as to the jeopardy
5 element, there is no dispute as to any material fact and Plaintiff is entitled
6 to judgment as a matter of law.

7 c. The jury will determine the causation element of Plaintiff's wrongful
8 discharge claim. There is a dispute as to the material fact of Defendants'
9 motivation and/or motivations in terminating Dr. Anel. If the jury finds that
10 Dr. Anel's protests over withheld wages played any role in Defendants'
11 decision to fire him, then Plaintiff will have established his wrongful
12 discharge claim at trial.

13 6. Plaintiff's Motion for Partial Summary Judgment is GRANTED as to
14 Plaintiff's claim for willful withholding of wages in violation of RCW 49.52. Undisputed
15 material facts prove that, as a matter of law, Defendants Franciscan Medical Group,
16 Franciscan Health System, and Catholic Health Initiatives wrongfully and willfully withheld
17 wages due to Dr. Anel. A jury will determine damages as to this claim.

18 7. Plaintiff's Motion for Partial Summary Judgment is GRANTED WITH
19 MODIFICATION as to the scope of Dr. Anel's duty to mitigate. As a matter of law, the duty
20 to mitigate damages did not and does not require Dr. Anel to seek or accept employment
21 located more than 75 miles from his residence in Gig Harbor, Washington.

22 8. Plaintiff's Motion for Partial Summary Judgment is GRANTED IN PART
23 AND DENIED IN PART regarding affirmative defenses 1, 3, 5, 6, 7, 8, 9, and 15 as follows:

24 a. Defendants have agreed to withdraw affirmative defenses 1, 5, 8, and 15,
25 which are hereby dismissed with prejudice. Defendants have also agreed to
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1 withdraw the “laches” defense from affirmative defense 7. Therefore, the
2 “laches” defense is hereby dismissed with prejudice.

3 b. Affirmative defense 3 (mitigation) is not dismissed, as there are disputed
4 issues of material fact as to this defense. However, as a matter of law, the
5 duty to mitigate damages did not and does not require Dr. Anel to seek or
6 accept employment located more than 75 miles from his residence in Gig
7 Harbor, Washington.

8 c. Affirmative defense 6 (third parties may be liable for Plaintiff’s damages)
9 is hereby dismissed with prejudice in part. At trial, Defendants may present
10 evidence and argument that the Gig Harbor Police Department and/or Gig
11 Harbor Prosecutor caused some or all of Dr. Anel’s malicious prosecution
12 damages. Defendants have failed to produce competent evidence that any
13 other third parties caused any other damages alleged by Plaintiff.

14 Therefore, at trial Defendants are prohibited from presenting evidence or
15 argument that any other third parties caused any other damages alleged by
16 Plaintiff.

17 d. Affirmative defense 9 (unclean hands) is hereby dismissed with prejudice
18 in part. Defendants have failed to produce competent evidence that Dr.
19 Anel has unclean hands as to his defamation, tortious interference, or
20 malicious prosecution claims. At trial, Defendants are therefore prohibited
21 from presenting evidence or argument that Dr. Anel has unclean hands as
22 to his defamation, tortious interference, or malicious prosecution claims.
23 Plaintiff’s request that affirmative defense 9 be dismissed as to all other
24 claims is denied without prejudice. Plaintiff is granted leave to file a
25 summary judgment motion to dismiss affirmative defense 9 as to all other
26 claims on or before September 4, 2015; Defendants’ opposition (if any) is

1 to be filed on or before September 16, 2015; and Plaintiff's reply (if any) is
2 to be filed on or before September 21, 2015.

3 e. Plaintiff's request that the "waiver" and "estoppel" claims in affirmative
4 defense 7 be dismissed is denied without prejudice. Plaintiff is granted
5 leave to file a summary judgment motion to dismiss the "waiver" and
6 "estoppel" claims in affirmative defense 7 on or before September 4, 2015;
7 Defendants' opposition (if any) is to be filed on or before September 16,
8 2015; and Plaintiff's reply (if any) is to be filed on or before September 21,
9 2015.

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11 DATED this 3rd day of September, 2015.

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14 THE HONORABLE RICHARD MCDERMOTT
15 King County Superior Court Judge

16 PRESENTED BY:

17 THE BLANKENSHIP LAW FIRM, P.S.

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